

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC., a Delaware limited liability corporation,

Plaintiff,

- v -

DAEDALUS BOOKS, INC., a Maryland corporation,

Defendant.

ECF Case

## COMPLAINT

08-cv-4501 (WHP)

Plaintiff Capitol Records, LLC (“Capitol”), as and for its complaint (the “Complaint”) against Defendant Daedalus Books, Inc. (“Daedalus”), alleges as follows:

## PARTIES

1. Plaintiff Capitol is a Delaware limited liability corporation with its principal place of business at 150 Fifth Avenue, New York, New York, 10011.

2. Upon information and belief, Defendant Daedalus is a Maryland corporation with its place of business at 9645 Gerwig Lane, Columbia, Maryland 21046.

## **JURISDICTION AND VENUE**

3. This is an action for common law copyright infringement, unfair competition, and unjust enrichment. This Court has subject matter jurisdiction pursuant to 28 § U.S.C. §1332.

4. This Court has personal jurisdiction over Defendant pursuant to NY CPLR §302, because Defendant has transacted business within the state of New York, contracted to supply goods or services in the state of New York, and/or committed tortious acts without the state of

New York causing injury to person or property within the state of New York.

5. Venue for this action is properly laid in the United States District Court for the Southern District of New York under the provisions of 28 U.S.C. §§1391(a).

### **FACTS**

6. Capitol is one of the oldest and most respected companies in the music business. Founded in the 1940's, Capitol has a rich history of producing, recording, manufacturing, marketing, distributing, and selling sound recordings containing performances of musical compositions for some of the most beloved recording artists of our times, including, among others, the historic jazz figures whose recordings are at issue in this case.

7. Capitol continues in that business today as one of the largest record companies in the world, distributing sound recordings throughout the United States and, through its foreign affiliates, across the globe in the form of records, compact discs, cassette tapes, and digital recordings, among others ("albums").

8. Capitol has invested and continues to invest substantial sums of money, time, effort, and creative talent to manufacture, advertise, promote, sell, and license sound recordings embodying the performances of artists with whom they have agreements. To sell sound recordings, Capitol employs hundreds of individuals who are engaged in the process of making, advertising, promoting, selling, licensing and protecting its music.

9. Capitol has entered into various agreements by which it obtained the sole, exclusive, and complete rights to manufacture, distribute, and sell certain recorded musical performances of popular recording artists, which are subject to protection under federal or state statutory and common law. Capitol owns sound recordings contained on the albums identified on Exhibit A

hereto and incorporated by reference herein (“Infringing Albums”).

10. Capitol is compensated for its creative efforts and monetary investments largely from revenue attributable to the sale of albums to the public and the licensing of sound recordings to third parties.

11. Daedalus advertises, offers for sale, promotes, exploits and otherwise distributes within the state of New York and elsewhere albums manufactured by companies that have no legal right to manufacture or distribute the sound recordings on those albums within the United States. Those companies include, but are not limited to: Proper Records, Ltd., Primo Records and Jazz Legends.

12. The Infringing Albums that Defendant Daedalus has sold, advertised, offered for sale, promoted, exploited and/or otherwise distributed without authority within the state of New York and elsewhere, embody performances by a large number of legendary artists, including but not limited to: Nat King Cole, Frank Sinatra, Peggy Lee, Miles Davis, Stan Kenton, and Dean Martin, among others. These artists are well known to have been signed to major recording labels, including Capitol, and that the rights to many of these artists’ sound recordings are owned by Capitol.

13. Included among the many titles that Daedalus has sold, advertised, offered for sale, promoted, exploited and/or otherwise distributed without authority within the state of New York and elsewhere, are the albums set forth on Exhibit A. These albums are not an exhaustive list of those that Daedalus has improperly sold, advertised, offered for sale, promoted, exploited and/or otherwise distributed without authority; rather, on and information and belief they are a sample of the many infringing albums which Daedalus has distributed. The Infringing Albums contain many infringing sound recordings, including but not limited to: *That's Amore* - Dean Martin

(from *Aw C'mon*), *Powder Your Face with Sunshine* - Dean Martin (from *Aw C'mon*), *I've Got The World On A String* - Frank Sinatra (from *Young At Heart*), *From Here to Eternity* - Frank Sinatra (from *Young At Heart*), *Jeru* - Miles Davis (from *Young Miles*), *Boplicity* - Miles Davis (from *Young Miles*) and *Mona Lisa* - Nat King Cole (from *Seriously Smooth*).

14. None of the sound recordings owned by Capitol contained on the Infringing Albums has ever been licensed to Daedalus for distribution in the United States. Nor has Daedalus been authorized to create derivative works of Capitol's sound recordings. Notwithstanding many of the Infringing Albums have in their liner notes direct references to the fact that the sound recordings are owned by Capitol.

15. On information and belief, Defendant Daedalus intentionally and willfully promoted, advertised, offered for sale, exploited, and distributed sound recordings owned and/or licensed to others, including Capitol. By doing so, Defendant took advantage of all of the investment the sound recording owners and licensors have made in creating and promoting the works, and avoided the costs associated with licensing those works and paying royalties. Moreover, on information and belief, Defendant has offered to sell and sold albums with Plaintiff's sound recordings to Plaintiff's customers and distributors.

16. Upon information and belief, Defendant has acted willfully in violating and/or otherwise misappropriating Plaintiff's rights in Plaintiff's sound recordings.

17. Upon information and belief, Defendant's actions have resulted in damages of at least \$1,000,000.

**COUNT I**  
**COMMON LAW COPYRIGHT INFRINGEMENT**

18. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 17 of this

Complaint as if fully set forth herein.

19. The conduct of Defendant was and continues to be copyright infringement under New York common law with respect to many sound recordings owned by Plaintiff, including but not limited to the Infringing Albums set forth on Exhibit A.

20. Plaintiff has been injured and continues to suffer irreparable injury for which there is no adequate remedy at law as a result of Defendant's unlawful and inequitable conduct.

**COUNT II**  
**UNFAIR COMPETITION**

21. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 21 of this Complaint as if fully set forth herein.

22. The conduct of Defendant as alleged above was and continues to be unfair competition under New York common law.

23. Plaintiff has been injured and continues to suffer irreparable injury for which there is no adequate remedy at law as a result of Defendant's unlawful and inequitable conduct.

**COUNT III**  
**UNJUST ENRICHMENT**

24. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. Defendant has profited from its unlawful activities, including distributing, selling, promoting and/or otherwise exploiting many of Plaintiff's sound recordings, including but not limited to those on the Infringing Albums, thereby reaping financial rewards without having to pay the costs required to license or create the material that it used.

26. By unlawfully taking Plaintiff's property and using it without properly compensating Plaintiff, Defendant has obtained a windfall and have been enriched at Plaintiff's detriment and expense. Such actions constitute unjust enrichment.

27. Plaintiff has been injured as a result of Defendant's unlawful and inequitable conduct, and equity and good conscience require restitution.

WHEREFORE, Plaintiff seeks judgment as follows:

a. Defendant, its officers, directors, owners, partners, employees, servants, and agents, and all those persons in active concern and participation with the defendant, be enjoined and restrained from violating Capitol's rights by way of:

- (i) distributing, selling, promoting, or otherwise exploiting Plaintiff's sound recordings or any other works owned or exclusively licensed by Capitol, including but not limited those contained on the albums described on Exhibit A;
- (ii) practicing any conduct aimed at or likely to result in diverting business intended for Capitol or injuring Capitol's goodwill and business reputation by way of imitation, misrepresentation, false statements, advertisements, fraud and/or deception;

b. that Plaintiff be awarded actual and compensatory damages for Defendant's unlawful and inequitable activities;

c. that Plaintiff be awarded a disgorgement of Defendant's gains, profits, and advantages derived from Defendant's unlawful and inequitable activities;

d. that Plaintiff be awarded their reasonable attorneys' fees;

e. that Plaintiff be awarded the costs of this action; and

f. that Plaintiff be granted such other relief as the Court deems just and proper.

Dated: New York, New York  
May 13, 2008

CAPITOL RECORDS, LLC

By: /s/\_\_\_\_\_  
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**Infringing Albums**  
**Exhibit A**

<u>Artist(s)</u>	<u>Album Title</u>
Chet Baker	The Early Years
Chet Baker	Young Chet
Dean Martin	Aw C'Mon
Dean Martin	Wine, Woman & Golf
Frank Sinatra	Young At Heart
Frank Sinatra	Love Songs My Way
Kay Starr	For Real
Les Paul & Mary Ford	In Perfect Harmony
Mel Torme	Jazz and Velvet
Miles Davis	Young Miles
Nat King Cole	Cool Cole: The Nat King Cole Story
Nat King Cole	Seriously Smooth
Peggy Lee	The Peggy Lee Story
Stan Kenton	The Stan Kenton Story
Stan Kenton	The Progressive Years
Tex Ritter	Sing Cowboy Sing
Various	The Arranger's Touch
Various	The Cosimo Matassa Story
Various	Getting Funky
Various	Hittin On All Six
Various	Swinging Hollywood
Various	Stompin' Singers & Western Swingers
Woody Herman	The Woody Herman Story